TASMANIAN RACING APPEAL BOARD

Appeal No 17 of 2024/25

Panel:	**Mr Patrick O'Halloran (Chair)** **Ms Amber Cohen (Deputy Chair)** **Mr Rodney Lester (Panel Member)**	**Appellant:**	**Mr Wayne Yole**
Adviser:	**N/A**		
Appearances:	**Mr Dominic Deayton (on behalf of the Tasracing CRIO)** **Mr Damian Sheales (on behalf of the appellant)**	**Rules:**	
Heard at:	**Conference Room** **Prospect Government Offices** **171 Westbury Road** **Prospect TAS**	**Penalty:**	**Restricted from training from 119 Valley Road. No nominations will be accepted**
Date:	**26 March 2025**	**Result:**	**Upheld**

REASONS FOR DECISION

Background

1. Mr Wayne Yole ('the appellant') is the father of Mr Ben Yole.

2. At the address denoted as 119 Valley Road in Sidmouth ('the address') there are a number of separate defined areas and structures located at and upon that land.

3. On 22 February 2024 an Independent Stewards Panel ('the ISP') was appointed to investigate *inter alia* the actions of Mr Ben Yole, as identified within The Murrihy Report, said to have been undertaken by him at the address. The ISP commenced their investigation soon thereafter.

4. On 29 July 2024 Mr Ben YOLE was 'stood down' and on 30 September 2024 the Director of Racing exercised his power, per AHRR 90(7)(b), and suspended all harness licences held by Mr Ben Yole.

5. On 13 January 2025 the Office of Racing Integrity published a decision of the ISP to the parties regarding Mr Ben Yole.

6. That decision included the ISP findings that Mr Ben Yole had breached AHRR 218A(1) and 196D(1) in regard to actions undertaken by him as a trainer within the period 1 April 2020 and 1 April 2023. Such actions were further particularised to have been undertaken at the training facility at the address and included involvement by (stable foreman) Mr Tim Yole.

7. The Stewards decision further included the invitation for further submissions from Mr Ben Yole on the question of the appropriate penalty - such submissions to be provided by 20 January 2025.

8. The Board observes that nothing within the publication and/or the findings explicitly referred to or implicated any wrong doing by the appellant.

9. On 30 January 2025 the Office of Racing Integrity published the full decision of the ISP regarding Mr Ben Yole. That decision largely repeated their earlier decision in regard to rule breaches and in addition included their determination regarding the penalties to be imposed against Mr Ben Yole.

10. Within that decision the ISP noted (at paragraph 21) that the appellant had provided a character reference for Mr Ben Yole. That reference was then characterised as a 'relevant mitigating factor' (with reference to paragraph 49 under heading '*Mitigating factors*'). It is inferred that the ISP therefore accepted the contentions contained within that reference and gave them some weight when determining penalty.

11. As detailed more thoroughly below, as a matter of fact, the appellant throughout January 2025 (and prior) has been training horses upon the training facility located at the address.

12. The Board again observes however that nothing within the reasons for decision of 30 January 2025 nor the penalty imposed on Mr Ben Yole explicitly referred to or directly impacted upon either the appellant or the licence held by the appellant.

13. In regard to both decisions of the ISP, the Board further observes that:

    a. Nothing about the nature, status or geographic location of the training facilities or training establishment situated at 119 Valley Road in Sidmouth formed any part of the offending investigated, charged or penalised;

    b. The appellant was not said to have been involved directly or indirectly in any of the action, activity or matters for which Mr Ben Yole or Mr Tim Yole was investigated, charged and/or penalised.

14. On 31 January 2025 the Director of Racing wrote a letter addressed to Mr Ben Yole at 117 Valley Road in Sidmouth. That letter provided:

    In response to you being found guilty of breaching AHRR 218A(1) and being disqualified from participating in racing for the period 29 July 2024 to 29 July 2027 pursuant to Section 54(2) of the Racing Regulation Act 2004, as Director of Racing I inform you of the following.

        1. *As a disqualified person, you are subject to the restrictions as detailed in Part 16 of the Australian Harness Racing Rules.*

        2. *Under provisions of AHRR 259(6) I authorise you to undertake the following whilst this disqualification remains in force.*
            a. *Reside in the family home and associated surrounds located at the above address and defined by the boundary fence between your domestic premises and those licenced for racing activities*
            b. *Enter the licenced training premises at 117 Valley Road Sidmouth in an emergency event such as to address a natural disaster*
            c. *Each time you enter these premises under this provision the reason is to be documented including images and provided to the Controlling Body within five working days of the entry.*

    You may appeal these directions to the Tasmanian Racing Appel Board.

Please do not hesitate to contact officers from the integrity Controlling Body should you need further information or clarification

15. Mr Ben Yole did not file any appeal in regard to any aspect of the content of that letter or 'qualifications'[1].

16. It is apparent that when issuing those qualifications, the author exercised a degree of precision and care when acknowledging, delineating and distinguishing between the different internal boundary lines, areas, facilities and structures (i.e. domestic premises, licenced training premises) that were present and contained within the address as at that date. Further precision was exercised when stipulating where Mr Ben Yole could and could not go or be found at the address.

17. The letter did not 'shut down' the training facility at the address nor did it seek to express the imposition of a blanket ban on anyone attending the area designated as the training facility at the address.

18. Nothing within the 'qualifications' or 'clarifications', made per AHRR 259(6), directly resulted in any fetter or consequence on the licence held by the appellant. Further on a plain reading of the qualification(s) no fetter would be enlivened unless or until there was an act of non-compliance with the stated 'qualifications' by either member of the Yole family.

The Appellant's Licence

19. Throughout the period commencing at the point in time at which the ISP was appointed through to the ISP's determination of penalty regarding Mr Ben Yole on 30 January 2025 the appellant remained a holder of an 'A' Grade Trainers licence - with his registered training address being 119 Valley Road in Sidmouth.

20. The appellant held such a licence unfettered without condition(s). In practical terms within that same period the appellant had in fact been training horses at the address, submitting them for nomination with such nominations being accepted by Stewards. In practical terms the appellant was responsible for the care and training of 86 harness horses and within the racing year ending 31 December 2024 the appellant trained 1635 starters.

The Letter

21. In a letter dated 3 February 2025 the acting Chief Racing Integrity Manager sent the appellant a letter ('the letter') to his address at Gravelly Beach.

22. That letter relevantly included:

I refer to the decisions of the Independent Stewards Panel delivered on 30 January 2025 to disqualify Mr Ben Yole for a period of 3 (three) years pursuant to AHRR 218A(1) (and to) issue a $5.000 fine under AHRR 196D(1).

The below Rules of Harness Racing details the restrictions that now apply.

Effective immediately, you are therefore restricted from training from 119 Valley Road, Sidmouth 7270 being the property formerly registered to Mr Ben Yole.

The Stewards would give consideration to a change of stable address to ensure compliance with these rules, in which event you would be able to continue training horses if approved by the Stewards.

[1] That word being used within the context as it appears within AHRR 259

Under these circumstance, forthwith no nominations will be accepted from you until such time your stables are approved by the Stewards.

(AHRR 259 and 259A provided – with AHRR 259(1)(a),(g) and (i) highlighted)

23. The Board observes that the letter did not assert any 'conduct incidents', compliance issues or 'character issues' with the appellant or assert any rule breaches said to have been committed by him. So much is clear by reference to the statement that '*The Stewards would give consideration to a change of stable address to ensure compliance with these rules in which event you would be able to continue training horses if approved by the Stewards'*.

24. The letter did not expressly stipulate what, if any, current concerns the author had with the training facility (i.e. that it was not up to the requisite standards or in compliance with published guidelines for facilities of this type, that it was too proximate to Mr Ben Yole, that there was evidence or suspicion of non-compliance with the qualifications that had been imposed on Mr Ben Yole days earlier on 31 January 2025).

25. Of relevance to the Board's determination was that ultimately no information was put before the Board to suggest that at the time the letter was given to the appellant there was an imminent prospect that the appellant would engage in conduct deleterious to the racing industry in the days or weeks following the publication of the ISP decision against Mr Ben Yole on 30 January 2025.

26. As is detailed in the more fulsome determinations made below in considering any purported breach of natural justice or procedural fairness - the Board accepts that prior to receiving the letter the appellant had not:

    a. Been made aware that any office holder of Tasracing was considering imposing any restrictions upon his licence to train and/or held any concerns regarding the training facility; or
    b. Been given any opportunity to make representations or submissions to any regulatory or disciplinary agency before any of the restrictions were imposed or stated to commence

27. The Board further accepts, with reference to the AHRR(s) highlighted within the letter, that within the period 31 January 2025 to 3 February 2025 that Mr Ben Yole had not (nor was it suggested by the acting Chief Racing Integrity Manager that he had):

    a. Per AHRR 259(1)(a) communicated with the appellant/his father for purposes relating to the harness racing industry;

    b. Per AHRR 259(1)(g) Entered the premises used for the purposes of the harness racing industry (i.e. the training facility / Training establishment);

    c. Per AHRR 259(i) held any registration, power or control over the designated portions of the address that was properly described as the training establishment at 119 Valley Road in Sidmouth.

28. Further there was no suggestion that the appellant had breached AHRR 230 ('Association with disqualified persons'), AHRR 238 or AHRR 239A.

<u>The Appeal</u>

29. Within a Notice and Ground of Appeal filed 6 February 2025 the appellant submitted that:

    - GROUND 1 – That (the appellant) was denied procedural fairness

    - GROUND 2 – That the decision was ultra vires of the power exercised by the decision maker

30. Within that Notice the appellant additionally sought a stay of the restrictions or conditions said to have been imposed on his licence by virtue of the contents of the letter.

Determination Of Application For A 'Stay'

31. For the purposes of assessing a stay and whether the letter was 'a decision or a penalty' pursuant to s 85 of the *Racing Regulation and Integrity Act 2024* ('the Act') it was determined[2] that the content of the letter:

    a. Went beyond a statement of consequences on the appellant as a result of decisions made by the Independent Stewards Panel on 30 January 2025 on Mr Ben Yole

    b. did have an operative effect or impact on the appellant's licence, and

    c. as such did constitute 'a decision' (having reached that conclusion no further assessment was undertaken as to whether the letter could also constitute 'a penalty').

Jurisdiction

32. As was made clear within the first and second stay decisions – the chair's determinations within those rulings made for the purposes of s 85 of the Act -– were not a determinative or binding ruling on any determination regarding jurisdiction on the substantive appeal with reference to section 81(2) of the Act.

33. On the issue of jurisdiction s 81(2)(a) of the Act requires that the presiding member is to determine any question relating to the jurisdiction of the TRAB.

34. Broadly speaking determining such an issue requires consideration of '*Division 3 – Institution of appeals to TRAB*' including s 76 '*Persons may appeal to the TRAB about certain matters*' - and - s 77 '*Other rights of appeal to TRAB'*.

Did The Letter Impose Conditions On The Appellant's Licence

35. Enlivened therefore within the determination of jurisdiction, and relied upon by the appellant, was s 77(1)(k) of the Act. That section provides:

    (1) A person may appeal to the TRAB if the person is aggrieved by a decision of Tasracing to -

    ……

    (k) impose conditions on the person's licence, or registration, granted or approved under the Rules of Racing

36. In short summary the appellant's position was that the letter had clearly imposed restrictions on his licence: relating specifically to where he could train horses and the ability to nominate horses.

37. On the issue of jurisdiction and more generally in regard to how the letter was to be characterised the respondent's position included:

    a. that 'the true intention and effect of (the letter) is to communicate the position that, as a result of the combination of the effects of AHRR 259(1) and Mr Ben Yole's continued residence at (the address), (the appellant) may not lawfully conduct training activities from (the address) under the provisions of the AHRR;

[2] 'Stay Application – reasons for decision' dated 10 February 2025 ('the first stay decision') and 'Stay Application – Reasons for Decision' dated 12 March 2025 ('the second stay decision')

b. that ‘as a result of the effects of Mr Ben Yole’s disqualification under AHRR 259(1), (the appellant) may not conduct training activities at the stated premises. That is linguistically, and legally, distinct from the imposition of any further or additional condition to those which automatically applied to Mr Ben Yole by virtue of the latter’s disqualification’;

c. that ‘what was being communicated to the appellant by the language of (the letter) is that, by reason of the cumulative effect of the restrictions immediately imposed on Mr Ben Yole by reason of his disqualification under AHRR 259(1), in addition to Mr Ben Yole’s continued residence at the property, is that no person (not just the appellant) may undertake training activity at the Property’.

38. In the Board’s consideration of the letter as a whole – as was observed in the first and second stay decision – the use of the words ‘*Effective immediately*’ clearly, in the context of this matter, express:

a. the commencement of something new and restrictive;

b. a starting time point of restrictions that are to commence on 3 February 2025 (as opposed to, with reference to the penalty on Ben YOLE a start point of 30 January 2025) and;

c. conveys that separate to the starting time- that the restrictions are to be effected upon Mr Wayne YOLE

39. Consistent with the findings made in the first and second stay ruling this Board determines that the correspondence of 3 February 2025:

a. articulates the exercise of a statutory power or decision made or taken by the author;

b. are actions which are attended with and resulted in significant consequences upon the appellant and his licence;

c. did change the ‘rights and privileges’ the appellant held as a trainer.

40. In practical terms as a result of the correspondence from 3 February 2025 (i.e. ‘effective immediately’) the Board further determines that the appellant was:

a. Restricted from training from 119 Valley Road in Sidmouth, and

b. in effect not able to submit any nominations until such time as his stables are approved by the Stewards.

41. In light of those determinations it is the Board’s further determination that, for the purposes of 77(1)(a) of the Act the appellant is ‘a person aggrieved by a decision of Tasracing’. Further it is determined that the information contained within the letter (of 3 February 2025) resulted in the imposition of conditions on the appellant’s licence.

42. For completeness it is clear that within the ambit of a Trainer’s licence ‘training’ and ‘nominating’ are activities which can be engaged in by the holder of such a licence (and in the most obvious sense fall squarely within the tasks required to completed by a trainer).

43. In light of such determinations the Board makes the further determination that it has jurisdiction – on the basis submitted by the appellant.

Process In Which Conditions Were Imposed

44. As identified within the previously stated determinations – at no stage was the appellant given any forewarning that such conditions were being considered or were to be imposed.

45. Inherent in that lack of notice was the resultant effect that at no stage was the appellant given the opportunity to respond to any concerns held by the acting Chief Racing Integrity Manager – be they actual concerns as to breaches of AHRR or that the appellant's continued activity and use of the training facility at the address would be seen to undermine the impact of the disqualification imposed on Mr Ben Yole.

46. In consideration of the appellant's first ground of appeal therefore is whether such action (or inaction) taken- by the respondent prior to sending the letter did in fact breach any tenets of natural justice or procedural fairness – and if so – were the breaches so egregious so as to justify upholding the appeal.

47. Within several decisions over the past number of years the Board has repeatedly expressed the importance of and how the tenets of natural justice and procedural fairness are enlivened within the processes in which a decision maker investigates, determines, imposes and notifies an interested party of their penalty or decision. This Board cites with approval the primary case relied upon by the appellant on this issue[3].

48. As previously stated by this Board a key principle of natural justice includes whether the person whose rights may be impinged has been afforded the opportunity to be heard. As to how such a tenet has application within a decision-making process ref Appeal No. 17-20 of 2023-24 at paragraph [15].

49. Relevant to this issue the respondent submitted 'no obligation of procedural fairness did or could arise in this instance because there was no statutory power or decision being exercised. The 'restrictions', properly construed, arose automatically under the Rules by virtue of the combination of AHRR 259(1) and 259(3)'.

50. As already determined it was a decision – where there was a positive obligation on the respondent to alert this to the appellant. With reference to the timeline in which decisions were made and the subject matter of those decisions it cannot properly be said that the imposition of the conditions occurred in an emergency situation (ref Aickin J in *Heatley v Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487).

51. With reference to the previously stated determinations under separate heading above it is clear that the actions taken by the Respondent fell well short of compliance with the appropriate and necessary principles that a modern approach to procedural fairness dictates – primarily but not exclusively being afforded the opportunity to be heard.

52. However before conclusively determining the ground in its entirety consideration must be had as to what the appellant may have submitted if given such an opportunity. It is relevant to consider such submissions and consider a possibility that nothing the appellant could have submitted would have or could have possibly changed the actions taken by the respondent.

53. That is, was this a situation where the clear, identifiable and accepted actions of the appellant meant that there was an overwhelming inevitably that the respondents would be justifiably compelled to act by imposing one or more conditions to the appellant's licence. Was the appellant in a position where he was in essence bowing to the inevitable and nothing the appellant could submit would materially change the inescapable outcome.

54. On review of the totality of the material available to the Board – that is not such a situation that exists in the instant matter.

[3] *Day v Harness Racing NSW* [2-24] NSWCA 423 at [99]-[101] and [104] - [115]

55. In the circumstances of this matter, whilst to a degree speculative, it appears self-evident that in the event the appellant was given the opportunity to respond to either the proposed concerns, interpretation of the earlier qualifications or the conditions to be imposed he would readily have had to hand some matters of import and relevance including the incontrovertible fact that he had been training at the facility at the address for an extended period of time without incident and without any concerns being previously raised – and - that the qualifications issued to Mr Ben Yole could not on any sensible interpretation be seen to impinge on the rights and privileges the appellant was exercising at the training faciality at the address during the relevant period.

Is There Justification for Imposing Such Conditions

56. In light of the above determination it further remains necessary to consider whether, separate to the significant breaches as to the manner, process or timing in which the respondent determined and imposed the conditions, there was any justification for the respondent imposing such conditions.

57. With reference to the above timeline (under heading background) no such justification can be observed. To the contrary not only had the appellant been training at the facility for an extended period of time he had been submitting horses for nomination which had been accepted. This further occurred within the broader context of a strong licence history.

58. Nothing in the letter, nor within any submissions made to the board, identified any animal welfare concerns or activity undertaken by the appellant or the training facility which he used could be seen to justify the imposition of such conditions.

59. Whilst reference was made by the Respondent to Appeal 507 from the Racing Penalties Appeal Tribunal (RPAT) of Western Australia (Christine Robartson) the Board notes the current matter for determination is far more analogous to the issues considered within the TRAB *Appeal No. 06 of 2020 (Shane Whitney)*.

60. Then as in now the Board was required to determine an appeal against the imposition of a condition prohibiting a licenced trainer from training at a specified address. There as in here it was relevantly observed at para 34

> *Further the appellant's proposal is clearly distinguishable from those where family members who otherwise have limited involvement in the industry seek licence to operate in circumstances where the strong suspicion is that the disqualified person will in fact be the one conducting the operation. There is no suggestion this would be the case in these circumstances. The appellant is very much his own person and has long operated independently of his father.*

61. In light of the above determinations made in consideration of Ground 1, there is no need to consider the appellant's second ground of appeal. However, without reaching a concluded view it appears incontrovertible that from 1 February 2025 the Act (that is the *Racing Regulation and Integrity Act 2024*) empowered the Chief Racing Integrity Officer or by delegate or transitional power the Chief Racing Integrity Manager to impose condition on participant's licences.

62. In all the circumstances the Board upholds the appeal against the decision of the Acting Chief Racing Integrity Manager to impose the conditions or restrictions stated within the letter that:

    a. Restricted the appellant from training from 119 Valley Road in Sidmouth, and

    b. Restricted the submissions of nominations by the appellant.

63. The decision to impose the conditions is quashed per s 99(1)(a) of the *Racing Regulation and Integrity Act 2024*.

64. As the appellant's appeal was entirely successful, the whole of the appellant's prescribed deposit is to be refunded to him per ss 99(5)(e) of the *Racing Regulation and Integrity Act 2024.*

DATED: 28 JULY 2025